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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,380	12/10/2001	Gary Alan Hayter		4943
40318	7590	05/31/2005	EXAMINER	
ALAN BURNS 108 RAMONA ROAD PORTOLA VALLEY, CA 94028			TAYLOR, BARRY W	
		ART UNIT		PAPER NUMBER
				2643

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/016,380	HAYTER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Barry W Taylor	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 05 May 2005.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-15 and 17-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ ..
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/18/02</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Objections***

1. Claims 14-15 are objected to because of the following informalities: Currently amended claim 14 last line reads, "matching<sub>1</sub>" which should read as "matching<sub>2</sub>". Claim 15 last line reads "signals<sub>1</sub>" which should read as "signals<sub>2</sub>". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baehr et al (5,839,050 hereinafter Baehr) in view of August et al (6,389,055 hereinafter August) or Wang et al (2004/0199387 hereinafter Wang).

Regarding claims 1 and 14. Baehr teaches an apparatus and method for determining radio listenership (title, abstract) wherein one or more broadcast signals are received (see left side of figure 2 wherein FM or AM received and converted to digital enabling microprocessor 44 the ability to store the received raw listenership data (item 53 figure 2) ) before transmitting the raw listenership data (item 52 figure 2) to processing center (see figure 3 wherein processing center receives and correlates the raw listenership data into statistical data (see item 70 figure 3)) so that audience share data (i.e. listenership) may be determined. Furthermore, Baehr teaches the intermediate signal is actually converted into an **audio** signal (see at least col. 6 lines 27-29) before the automobile actually retransmits it.

Baehr does not explicitly show receiving calls from one or more telephones.

August teaches using a capture device (see item 110 figure 4) that captures TV and/or radio broadcast data (see capture device 110 figure 4 captures broadcast data) and forwards to base site (see capture device 110 receives broadcast data and forwards to cellular base station) enabling broadcast advertising providers the ability to track and determine that their ad is being played for the time that they are being charged for (col. 7 lines 44-54, col. 12 lines 44-56). Furthermore, August teaches audio frequency band (col. 3 line 51) and the encoded data stream is either inaudible or is heard (col. 3 lines 54-56). See audio frequency range col. 4 lines 8-12 and audio

signal col. 4 line 59 or alternatively encode data stream onto the perceptible signal col. 4 line 62 – col. 5 line 2. See capture device (i.e. mobile phone) used to receive the encoded data before sending to central location for processing (figure 4), such as information needed to order services or products. In fact, the information may be seen and possibly heard by a viewer/listener which is transmitted as part of the video or audio signal (column 4).

Wang teaches method and system for purchasing music (title and abstract) wherein cell phone used to capture short sample of music from car stereo enabling the listener to purchase at a location that is remote from retail locations (paragraphs 0002 – 0005, 0009 – 0012, 0020 – 0024, 0048 - 0051). In fact, listeners are able to “stump” disk jockey's who play a snippet of a song and then reward the listener who correctly identifies the “mystery” song (paragraph 0035). Wang further discloses using embedding technique to identify the music (paragraph 0068). Wang discloses that the signal does not have to be music but may include radio broadcast programs, advertisements and other signals of interest (paragraphs 0071 and 0076).

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to utilize the teachings of August or Wang into the teachings of Baehr in order to allow advertisers to monitor radio broadcast as well as allowing advertisers to offer impulse purchasing of music content of the broadcast in real time as disclosed by Wang (see at least paragraphs 0009-0010, 0037, 0050-0051, 0061, 0068).

Regarding claim 2. August teaches using mobile telephone (see item 110 figure 4).

Regarding claim 3. Baehr teaches receiving radio broadcast (see FM or AM receiver 30 or 32 figure 2).

Regarding claim 4. August teaches audio portion of a television broadcast (see figure 5 wherein receive device 110 receives audio portion from nearby TV item 101).

Regarding claim 5. August teaches broadcast from satellite (col. 5 line 35).

Regarding claim 6. Baehr teaches statistical means (see figure 4b and col. 8 line 51 – col. 9 line 55).

Regarding claims 7-9. Baehr teaches correlating the raw data with known data to determine listenership (see at least figure 4b).

Regarding claim 10. August teaches content of the broadcast signal contains an encoded, injected, or embedded survey signal (see last three lines of abstract, col. 3 lines 54-56, col. 4 line 45 – col. 5 line 65, col. 6 line 12 – col. 6 line 62, col. 7 lines 19-67, col. 12 lines 44-53). Wang also teaches the broadcast contains encoded, injected or embedded survey signal (abstract, paragraphs 0020, 0068, 0071, 0076).

Regarding claim 11. August teaches caller id or ANI data may be used (col. 12 lines 38-56). Wang also discloses well-known techniques of identifying telephones may be used (see caller id---paragraph 0073).

Regarding claims 12-13. August teaches using telephone to send all or part of the content of the received telephone call and broadcast signal (col. 6 lines 12-67). Wang also allows advertisers to offer impulse purchasing of music content of the

broadcast in real time as disclosed by Wang (see at least paragraphs 0009-0010, 0037, 0050-0051, 0061, 0068).

Regarding claims 15. August teaches matching telephone call data containing particular broadcast information with known broadcast information (col. 7 lines 44-54, col. 12 lines 44-56). Wang also allows advertisers to offer impulse purchasing of music content of the broadcast in real time as disclosed by Wang (see at least paragraphs 0009-0010, 0037, 0050-0051, 0061, 0068).

Regarding claim 17. Baehr teaches determining listenership (col. 8 lines 51-55).

Regarding claim 18. Baehr teaches demographic information (col. 9 lines 10-16).

Regarding claims 19-20. August further shows providing subscribers with particular information including "news", "talk radio", etc (see col. 7 lines 34-43) which obviously requires subscribers to provide demographic information.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-15 and 17-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W. Taylor, telephone number (571) 272-7509, who is available Monday-Friday, 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached at (571) 272-7499. The facsimile phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2600 receptionist whose telephone number is (571) 272-2600, the 2600 Customer Service telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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